

MILITARY LEAVE**A. Purpose and Scope**

To grant military leave to certificated eligible employees in accordance with current state and federal law.

B. General

This policy is designed to educate District personnel about their rights under the USERRA and California law. It merely summarizes existing law and is not intended to create any rights not set forth in Federal or California law. Employment and reemployment rights of employees who take military leave of absence are protected by USERRA. These rights also are protected by the California Military and Veterans, the California Education and the California Government Codes. In cases where California law provides greater protections to employees, it shall supersede Federal law. For more specific information, please consult these laws and/or the Associate Superintendent for Human Resources.

Anti-Discrimination

Any person who is a member of, applies to be member of, performs, has performed applies to perform, or has an obligation to perform in a uniformed services shall not be denied initial employment, reemployment, retention in employment, or any benefit of employment. The District also shall not discriminate against or take any adverse employment action against any person who has exercised a right under Uniformed Services Employment and Reemployment Right Act (USERRA), has taken an action to enforce his or her rights under USERRA, has testified in or in connection with a proceeding under USERRA, and/or has assisted or participated in an investigation under USERRA.

C. Forms Used and Additional References

Leave of absence form

D. Procedure

Under USERRA, military leave shall be granted to any District employee who performs service in the uniformed services. This means employees who perform duties on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard, and a period for which a person is absent for the purpose of an examination to determine the fitness of the employment for the purpose of performing funeral honors.

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Under California law, any certificated employee who is a member of the State Military Reserve who is engaged in temporary military training, drills, unit training assemblies or similar inactive duty, not to exceed 15 calendar days each year is entitled to a temporary unpaid military leave.

Except as set forth herein, under California law, paid Military leave not to exceed thirty calendar days shall be granted to any District employee who:

1. Is a member of the reserve corps of the United States Armed Forces, National Guard or Naval Militia who, on a temporary basis, is engaged in active military training, encampment, naval cruises, special exercises, or like activity, provided that:
 - a. The ordered duty does not exceed 180 calendar days, including time involved in going to and returning from such duty.
 - b. The employee has been an employee of the district for at least one year immediately prior to the day the military leave begins. All recognized military service performed prior to and during district employment shall count toward the period of time that the employee has been employed by the district.
2. Has served with the District for at least one year and is ordered, on other than a temporary basis, into active military duty as a member of the reserve corps of the United States Armed Forces, National Guard or Naval Militia or who otherwise is inducted, enlisted, entered, ordered or called into active duty as a member of the Armed Forces.
3. Is a member of the National Guard, however long employed by the District, who is engaged in military or naval duty during a state of extreme emergency as declared by the Governor or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code Section 146, provided that the leave does not exceed the duration of the emergency.
4. Is a member of the reserve corps of the United States Armed forces, National Guard or Naval Militia who is engaged in temporary inactive duty training under the conditions described in items 1(a-b) above. Except for National Guard members, the District is not required to, but may, provide paid military leave for employees requesting or taking leave under this section.

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Leaves

An employee's cumulative length of the absence and of all previous military leave shall not exceed five years, excluding certain training and service obligations specified in USERRA.

Notification of Leave

An employee who needs to be absent from the District to fulfill uniformed service shall provide advance written or verbal notice to the Superintendent or designee, unless the giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable.

Compensation During Leave

Under USERRA, military leave is unpaid. Under California law, an employee shall receive his/her salary for the first thirty (30) calendar days of an absence for the purposes described in items one through four above. A National Guard member, however, is entitled to receive his/her salary for the first thirty days regardless of length of employment.

The thirty-day pay entitlement is the maximum allowance which shall be paid to any employee for any one Military Leave or during any one fiscal year. For certificated employees, thirty days compensation shall be one-tenth of the employee's annual salary. Teachers shall not be entitled to compensation during non-teaching, non-paying months of the year.

Benefits/Employment Status

Absence for military leave shall not affect the classification of any certificated employee. In the case of a probationary employee who enters the active service of the United States or the State of California, the period of absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose.

Under California law, an employee on military leave for active duty shall not accrue sick leave or vacation leave. However, an employee who is a National Guard member on active duty shall accrue vacation and holiday privileges, but not sick leave, for the first thirty days of active service, regardless of his/her length of service with the District.

An employee on temporary military leave, including an employee in the National Guard, shall continue to accrue the same vacation, sick leave or holiday privileges for up to a maximum period of 180 days, provided he/she has been employed by the District for at least one year immediately prior to beginning the leave. During the period of military

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leave, an employee may, but cannot be required to, use any vacation or similar paid leave accrued before the commencement of the Military Leave.

An employee may elect to continue his/her health coverage during the leave. An employee on military leave may be required to pay the employee cost, if any, of any funded benefit to the extent that other employees on leave are so required. The maximum period of coverage for the employee and his/her dependents shall be either 18 months from the beginning of the leave or until the day after the employee fails to apply for or return to employment, whichever is less. An employee absent for 30 days or fewer shall not be required to pay more than the employee share for such coverage. An employee absent for thirty-one days or more may be required to pay not more than 102 percent of the full premium under the plan.

Pension Plan Service Credit

Pension plan service credit and vesting shall continue during an employee's military leave as though no break in service has occurred. Payment of employer and employee contributions shall be made in accordance with law for members of the State Teachers' Retirement System and Public Employees' Retirement System.

Reinstatement Rights

An employee shall be promptly reinstated upon request. The District, however, has the right to require employees returning from military leave to provide documentation of the length and character of their uniformed service.

At the conclusion of the military duty, an employee shall be entitled to return in the job the person would have held had the person remained continuously employed, or a position of equivalent seniority, status, at the salary to which he/she would otherwise have been entitled. However, employees whose period of uniformed service is 90 days or less shall be reemployed in the position he or she would have had he or she remained continuously employed, so long as the employee is qualified for this position or can become qualified after reasonable efforts by the District. If after reasonable efforts, the employee is not qualified to perform such a position, then the employee shall be reemployed in the position he or she held prior to the commencement of their uniformed service. If an employee cannot become qualified for either of these positions, then the District shall place him or her in a position that nearly approximates the position described above, which the employee is able to perform.

If the employee's previous position has been abolished, then he/she shall be reinstated in a position of like seniority, status and pay if such position exists. If no such position exists, then the employee shall have the same rights and privileges the employee would

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have had if the employee occupied the position when it ceased to exist and had not taken military leave.

An employee may not be reemployed if the District's circumstances have so changed as to make such reemployment impossible or unreasonable. In cases of service related disabilities, an employee may not be reemployed if the accommodation, training or effort would impose an undue hardship on the District. In addition, if the employee's position was for a brief, nonrecurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period, then the employee shall have no right to reemployment.

An employee who performs active military duty in time of war or national emergency has a right to return to his/her position within six months of an honorable discharge or placement in inactive duty. Reemployment rights shall not be extended to any such employee who fails to return within 12 months after the first date upon which he/she could terminate or could cause to be terminated his/her active service.

When an employee has been on military leave for reasons other than war or national emergency, the time frame for reinstatement shall depend on the length of military service as follows:

1. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full calendar day following the completion of military service.
2. For a leave of 31 to 180 days, the employee shall complete an application for reemployment not later than 14 days after the completion of military service.
3. For a leave of more than 180 days, the employee shall submit an application for reemployment within 90 days after the completion of military service.

An employee failing to apply for reemployment within the appropriate period does not automatically forfeit his/her rights, but shall be subject to the District's rules governing unexcused absences.

For Cause Termination

Under USERRA, employees who serve in the military for a period of more than six months may not be discharged without cause for one year following the date of reemployment. Employees who serve between one and six months may not be discharged without cause for six months following the date of reemployment. Employees serving less than thirty days are given no protection from discharge without cause.

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E. Reports Required

None

F. Record Retention

Leave of Absence request

G. Responsible Administrative Unit

Human Resources

H. Approved By

Associate Superintendent for Human Resources

Legal Reference:

CALIFORNIA EDUCATION CODE

Sections 22850-22856	Pension benefits, STRS members on military leave
Section 44800	Effect of active military service on status of employees
Section 45059	Employee ordered to military/naval duty – computation of salary

CALIFORNIA GOVERNMENT CODE

Section 18540	Definition of armed forces
Section 18540.3	Recognized military service
Sections 20990-21013	Pension benefits, PERS members on military leave

CALIFORNIA MILITARY AND VETERANS CODE

Section 146	Events justifying calling of militia into active service
Sections 395-395.9	Privileges and penalties of Military Leave

UNITED STATES CODE, TITLE 38

Sections 4301-4333	Uniformed Services Employment and Reemployment Rights Act of 1994
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Acknowledged: 3/25/03